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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,239	12/20/2005	Claude Juneau	06670/0203474-US0	8830
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DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER GRANO, ERNESTO ARTURIO	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 03/03/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/552,239	Applicant(s) JUNEAU, CLAUDE	
	Examiner ERNESTO A. GRANO	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 2-9 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 10, and 12-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species II in the reply filed on 12/17/2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 10 and 12-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 4-5, "said release mechanism" lacks antecedent basis for one particular release mechanism, or is inconsistent with the originally defined "at least one release mechanism". See also claim 1, line 9. Similarly, in claim 1, lines 5 (twice) and 8, "the tank" lacks antecedent basis for one particular tank, or is inconsistent with the originally defined "at least one tank". See also claim 11, lines 1 and 2, and claim 15, line 3 (twice).

In claim 13, line 2, it is indefinite whether "at least one tank" is an additional structure, or refers to the previously defined "at least one tank".

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In claim 17, lines 1-2, "said at least one housing" lacks antecedent basis from indicated parent claims 16, 12 or 1.

Claim Rejections - 35 USC § 102

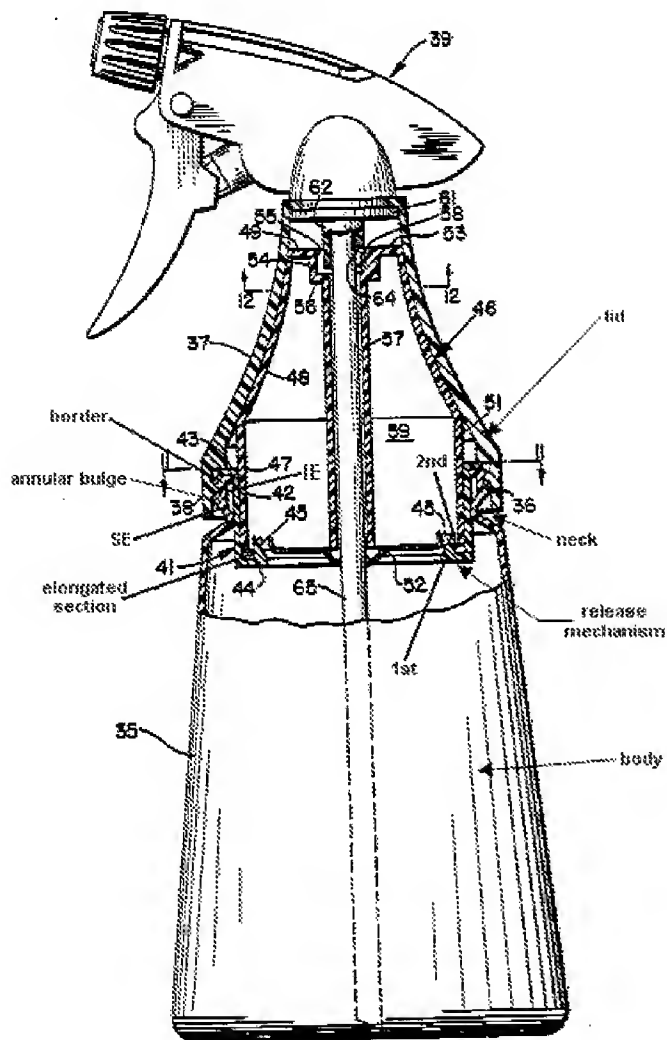
4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 10, and 21 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Klinganman (US Patent 4,088,246).

FIG 10



In re claim 1, with reference to figure 10, Klinganman ('246) discloses a device for a container provided with an opening and a flexible wall, the device comprising : at least one tank (46) insertable into the container (35) in an operating position; at least one release mechanism insertable into the container (35) in operating position, said release mechanism being capable of cooperating with the tank in order to connect the tank with the interior of the container (35) in response to a pressure exerted on said

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release mechanism via the flexible wall of the container(35); a support means (41) insertable into the container (35) to support in operating position the tank and the release mechanism in relation to the container (35), the support means (41) having a fastener (36) to fix the support means (41) on the container (35) close to the opening.

In re claim 10, with reference to figure 10, Klinganman ('246) discloses wherein the device is of a material chosen from the group comprising metal, plastic, paperboard, glass and an alloy of metal. See column 4, paragraph 4 (last paragraph)

In re claim 21, with reference to figure 10, Klinganman ('246) discloses wherein the support means (41) is made of a flexible material. Column 2, lines 9 and 10

6. Claims 1, 10, and 21 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Haber et al. (US Patent 5,330,048).

In re claim 1, with reference to figure 10, Haber et al. ('048) discloses a device, the device comprising: at least one tank (8); at least one release mechanism (24); said release mechanism (24) being capable of cooperating with the tank (8); a support means (74) to support the tank (8) and the release mechanism (24); the support means (74) having a fastener. (see figures 3 and 3A)

In re claim 10, with reference to figure 10, Haber et al. ('048) discloses wherein the device is of a material chosen from the group comprising metal, plastic, paperboard, glass and an alloy of metal. (see column 3, lines 9-14)

In re claim 21, with reference to figure 10, Haber et al. ('048) discloses wherein the support means (41) is made of a flexible material.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12-15, 19, and 20 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Klinganman (US Patent 4,088,246).

In re claim 12, with reference to figure 10, Klinganman ('246) discloses the a container comprising a body and a lid, and wherein the fastener (36) comprises a border capable of cooperating with a superior edge of the container, the border allowing to fix the support means (41) on the container (35).

However, Klinganman ('246) fails to disclose wherein the container is a can.

Since applicant has not disclosed that including a can as the container solves any stated problem or is for any particular purpose and it appears that container of Klinganman ('246) would perform equally well as a can, It would have been an obvious matter of design choice to include a can as the container Klinganman ('246).

In re claim 13, with reference to figure 10, Klinganman ('246) discloses wherein the support means (41) comprises at least one housing (42) to place at least one tank which, in operating position, is adjacent with the flexible wall.

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In re claim 14, with reference to figure 10, Klinganman ('246) discloses wherein at least one tank comprises a preferable flexible wall. See column 4, paragraph 4 (last paragraph)

In re claims 15 and 20, with reference to figure 10, Klinganman ('246) discloses wherein the release mechanism comprises of a tooth (45) having a first end (1st) fixed to the support means (41) and a second end (2nd) adjacent to the tank to perforate the tank and to connect it to the interior of the container (35) when said pressure is exerted.

However, Klinganman ('246) fails to disclose wherein the second end is a blunt end.

Since applicant has not disclosed that including a blunt end solves any stated problem or is for any particular purpose and it appears that second end (2nd) of Klinganman ('246) would perform equally well as a blunt end, It would have been an obvious matter of design choice to include a blunt end to the support means (41) of Klinganman ('246).

In re claim 19, with reference to figure 10, Klinganman ('246) as applied to claim 1 above, discloses the claimed invention except for at least one tank comprises six tanks. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the tank (46) of Klinganman ('246) with six smaller tanks to align with six projections, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

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9. Claims 16-18 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Klinganman (US Patent 4,088,246) as applied to claim 12 above, in view of Jamieson et al. (US 5,620,725).

In re claim 16, with reference to figure 10, Klinganman ('246) as applied to claim 12 above, discloses the claimed invention except for wherein the support means is.

Jamieson et al. ('725) teaches a device for a container provided with an opening and a flexible wall, the device which includes a tank 5 and a support means 11 which is an arc comprising two opposite jambs 11 and having an internal surface and an external surface. (see figure 3)

Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the support means of Klinganman ('246) as applied to claim 12 above, to include a flexible arc shape as taught by Jamieson et al. ('725) in order to be able to fit into different sized container.

In re claim 17, Jamieson et al. discloses wherein said at least one housing is located on the external surface of each jamb 11. (see figure 3)

In re claim 18, Jamieson et al. discloses wherein the arc is flexible in order to exert a return force on the two jambs 11 towards a home position. (see figure 3 and column 8, line 40)

Response to Arguments

10. Applicant's arguments filed 07/23/2008 have been fully considered but they are not persuasive. Regarding claim 1, the Applicant argues that the piercing of the frangible bottom walls of the capsule is not obtained via a pressure exerted on the container's wall and it is obtained via a downward movement applied on the capsule. In Klingaman, when pressure is exerted via the container's wall in a downward movement it creates a pressure on the release mechanism to connect the tank with the interior of the container. If no pressure is exerted via the container's wall then there cannot be a connection between the tank and the inner container which there certainly is.

In accordance with MPEP 2111.01, during examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERNESTO A. GRANO whose telephone number is (571)270-3927. The examiner can normally be reached on 7:00am - 4:00pm Mon.-Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bryon P. Gehman/
Primary Examiner, Art Unit 3728

/Ernesto A Grano/
Examiner
Art Unit 3728

EAG